



was that of Ms. Elswick. (Tr. 39-41.) He stated that while living with Ms. Bennett, he had also stayed at times with his parents, who were ill, across the state line in neighboring Kentucky. (Tr. 13, 31-32.)

The insurance company has the burden of proof in this case and based on the defendant's deposition, it is clear that there is a genuine issue of material fact as to where Slone was residing at the time of the insurance application and whether he misrepresented the facts to the insurance agent. Accordingly, summary judgment is not appropriate. *See* Fed. R. Civ. P. 56(c).

It appearing proper, it is **ORDERED** as follows:

1. The Motion for Summary Judgment is DENIED; and
2. The clerk will reset this case for trial before a jury.

ENTER: June 21, 2006

/s/ JAMES P. JONES  
Chief United States District Judge